

F. WILLIAM JOHNSON, JR.

IBLA 70-75

Decided September 10, 1971

Oil and Gas Leases: Known Geological Structure--Oil and Gas Leases: Noncompetitive Leases

Land which is within a known geologic structure of a producing oil or gas field may not be leased noncompetitively for oil or gas under the Mineral Leasing Act, even though an offer was filed before the land was considered to be within the structure, and the offer must be rejected for this reason.

Oil and Gas Leases: Known Geological Structure

Where the Geological Survey has determined that a tract of land is in an area which is considered to be favorable for gas production and has declared the tract to be within a known geologic structure of a producing oil or gas field, and where an appellant does not furnish any evidence to demonstrate that this determination is erroneous, the lands may not be leased noncompetitively for oil or gas under the Mineral Leasing Act.

IBLA 70-75 :

BLM 071557 (Louisiana)

F. WILLIAMS JOHNSON, JR.

: Noncompetitive oil and
: gas lease offer rejected

: Affirmed

DECISION

F. William Johnson, Jr., has appealed to the Secretary of the Interior from a decision dated July 24, 1969, whereby the Office of Appeals and Hearings, Bureau of Land Management, affirmed a decision of the Eastern States land office dated October 31, 1968, which rejected his noncompetitive oil and gas lease offer BLM 071557 (Louisiana) for the reason that the lands sought are not leasable noncompetitively as they are within the known geologic structure of the South Kraemer field.

Mr. Johnson's offer was given first priority among the offers filed for the same land (S 1/2 SW 1/4 sec. 19, T. 14 S., R. 18 E., La. Mer., Louisiana), during the June 1963 simultaneous filing period. The record shows that the land involved was patented on May 21, 1957, Patent No. 1171592, under the Color of Title Act, 43 U.S.C. §§ 1068-68(b) (1964), with a reservation of oil and gas to the United States, as provided by statute. As pointed out in the decisions below, action on the offer was suspended pending consideration of legislation proposed in the Congress, but the suspension agreed to by the Department terminated at the conclusion of the Ninetieth Congress. Meanwhile, the Director, Geological Survey, determined that, effective August 18, 1968, the lands included in the subject lease offer are within the undefined known geologic structure (KGS) of the South Kraemer field. The land office rejected the lease offer for this reason. Mr. Johnson appeals from the affirmance of that action below.

Appellant's contentions here are essentially the same as those addressed to the Director, Bureau of Land Management. He asserts that the failure of the land office to act on his offer pending consideration of proposed legislation was an arbitrary administrative delay. He urges that the record in this case is sufficient to overcome the presumption of validity of administrative action, and requests acceptance of his offer and issuance of a lease to him.

Section 17 of the Mineral Leasing Act, 30 U.S.C. §§ 226(a)-(c) (1964), reads in pertinent part:

(a) Authority of Secretary.

All lands subject to disposition under [this Act] which are known or believed to contain oil or gas deposits may be leased by the Secretary.

(b) Lands within known geologic structure of a producing oil or gas field; competitive bidding.

If the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than six hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease, which shall be not less than 12-1/2 per centum in amount or value of the production removed or sold from the lease.

(c) Lands not within geologic structure of a producing oil or gas field; first qualified applicant.

If the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under [this Act] shall be entitled to a lease of such lands without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of 12-1/2 per centum in amount or value of the production removed or sold from the lease.

Some years ago the Department's Solicitor reviewed the practice of issuing noncompetitive oil and gas leases for lands determined to be within the known geologic structure of a producing oil or gas field after filing of the offer but before issuance of the lease. He concluded that such practice was contrary to the statute cited above and inconsistent with the Department's established principle that the offeror has no vested right to a lease, but only an inchoate right to receive a lease over later applicants

if the Secretary, in his discretion, decides to lease the land. Solicitor's Opinion, 74 I.D. 285 (1967). This interpretation of the statute was embodied in the regulations by Circular No. 2231, 32 F.R. 13324, September 21, 1967, as follows:

1. The second sentence of 3122.1(a) is amended to read as follows: "When land is within the known geologic structure of a producing oil or gas field prior to the actual issuance of a lease, it may be leased only by competitive bidding and in units of not more than 640 acres to the highest responsible qualified bidder at a royalty of not less than 12-1/2 percent." [Now 43 CFR 3101.1-1 (1971).]

2. A new subsection (c) is added to 3123.3 as follows:

(c) If, after the filing of an offer for a noncompetitive lease and before the issuance of a lease pursuant to that offer, the land embraced in the offer becomes within a known geological structure of a producing oil or gas field, the offer will be rejected and will afford the offeror no priority. [Now 43 CFR 3110.1-8 (1971).]

The Mineral Leasing Act give the Secretary of the Interior discretion to lease any lands known or believed to contain oil or gas. It is not mandatory under the Act that an oil and gas lease be issued. What is mandatory, after the decision to lease has been made, is the type of lease that is to be issued. If the land is within the known geologic structure of a producing oil or gas field, it must be leased to the highest responsible qualified bidder; if the land is not within such a known geologic structure at the time of the lease issuance, it must be leased to the qualified person first making application therefor. See Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965).

It has been judicially noted in Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969), that

[t]he fact that the Bureau published a notice that it would receive offers to lease did not preclude a later exercise of discretion to decline to lease. An application for lease, even though first in time or drawn by lot from among simultaneous offers, is a hope, or perhaps expectation, rather than a claim.

Thus, notice for filing of offers is not an exercise of the Secretary's discretion to lease. The mere filing of an offer for a noncompetitive oil and gas lease which has not been accepted creates no vested right in the offeror. Duesing v. Udall, *supra*; Schraier v. Hickel, *supra*. Until a lease is actually issued there has been no decision to issue a lease. Andrea R. Greyber, A-31040 (December 19, 1969).

Neither the Mineral Leasing Act nor the Departmental regulations provide a time standard within which the Secretary or his delegate is compelled to exercise his discretion where a noncompetitive oil and gas lease offer has been filed. Therefore, the reason for suspension of action in this case has not been shown to be an abuse of discretion, which would be necessary to overcome the presumption of validity of administrative action. Furthermore, the appellant has offered no evidence to refute the determination that the tract of land described in his offer is within the undefined known geologic structure of the South Kraemer field.

The Department's regulations provide that leases not be issued noncompetitively for lands which are within a known geologic structure, regardless of whether the offer for such lands was filed prior to the determination of the known geologic structure. It follows that the decisions below were correct in rejecting the appellant's lease offer for lands determined to be within a known geologic structure of a producing oil or gas field.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Newton Frishberg, Chairman

We concur:

Francis Mayhue, Member

Anne Poindexter Lewis, Member

